

**DISTRICT OF COLUMBIA  
DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING**

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**NOTICE OF PROPOSED RULEMAKING**

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The Commissioner of the Department of Insurance, Securities, and Banking ("Commissioner"), pursuant to the authority set forth in section 117 of the Continuing Care Retirement Communities Act of 2004 (Act), effective April 6, 2005 (D.C. Law 15-270; D.C. Official Code § 44-151.01 *et seq.*) (2005 Supp.), hereby gives notice of his intent to add a new Chapter 82, entitled Continuing Care Retirement Communities, to Title 26 of the D.C. Municipal Regulations (Insurance), in not less than thirty days from the date of publication of this notice in the D.C. Register. The purpose of this new chapter is to implement the Act by establishing the licensing process for continuing care retirement communities; establishing the conditions to be included in the disclosure statement; listing the criteria to be included in the financial forecast; establishing standards for revocation of a start-up certificate, preliminary certificate, permanent license, and restricted or conditional license; and establishing standards for the Commissioner to determine whether a continuing care retirement community is insolvent or in a hazardous financial condition.

Title 26 DCMR (Insurance) is amended by adding a new Chapter 82, Continuing Care Retirement Communities to read as follows:

**Chapter 82 CONTINUING CARE RETIREMENT COMMUNITIES**

**8200 LICENSURE PROCEDURES**

- 8200.1 An applicant shall apply for licensure in accordance with the procedures contained in this section for the type of license the applicant is seeking. Types of licenses shall include Start-Up Certificates, Preliminary Certificates, Permanent Licenses, and Restricted or Conditional Licenses. All forms referred to in this section and following sections may be found on the Department of Insurance, Securities, and Banking website at [disb.dc.gov](http://disb.dc.gov).
- 8200.2 For new or development stage facilities, the applicant shall initially submit the following items to the Commissioner for review:
- (a) The applicant's name, address and telephone number;
  - (b) A copy of a non-binding reservation agreement form (a nonbinding agreement between a continuing care retirement community and future resident (or his representative) to reserve a unit in the continuing care retirement facility);

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- (c) An escrow agreement to establish an escrow account in compliance with the requirements of section 109 of the Continuing Care Retirement Communities Act of 2004;
- (d) A narrative describing the facility, its mode of operation, and its location; and
- (e) Any advertising materials to be used.

8200.3 Upon submitting all of the items describe in subsection 8200.2, the applicant for a new or development stage facility may:

- (a) Disseminate materials describing the intent to develop a Continuing Care facility; and
- (b) Enter into fully refundable non-binding reservation agreements for up to \$1,000.00. All funds received shall be escrowed with a bank, a trust company or another independent person or entity agreed upon by the provider and the resident, unless such account arrangement is prohibited by law.

8200.4 To obtain a Start-Up Certificate, an applicant for a new or development stage facility or provider shall submit the following to the Commissioner for review:

- (a) An Application for Licensure;
- (b) A Disclosure Statement as required by section 105 of the Act;
- (c) A copy of a binding reservation agreement or resident agreement; and
- (d) A market feasibility study.

8200.5 Upon issuance of a Start-Up Certificate, the applicant or provider may:

- (a) Enter into binding reservation agreements or resident agreements;
- (b) Accept entrance fees and entrance fee deposits over \$1,000.00. Any funds received shall be escrowed and shall be released with the approval of the Commissioner;
- (c) Begin site preparation work; and
- (d) Construct model units for marketing.

- 8200.6 To obtain a Preliminary Certificate, an applicant or provider must hold a valid Start-Up Certificate and shall submit the following to the Commissioner for review:
- (a) An explanation of any material differences between actual costs and projected costs contained in any Start-Up Certificate submission, except that such explanation is not required for existing Continuing Care facilities that are seeking to expand;
  - (b) An updated Disclosure Statement;
  - (c) Current interim financial statements; and
  - (d) Confirmation of signed reservation agreements for at least 50 percent of any new units and that those units were reserved through a deposit equal to at least 10 percent of the entrance fee or by a non-refundable deposit equal to the periodic fee for at least two months for facilities that have no entrance fee.
- 8200.7 Upon issuance of a Preliminary Certificate, an applicant or provider may:
- (a) Purchase or construct a Continuing Care facility;
  - (b) Renovate or develop structure(s) not already licensed as Continuing Care facility; or
  - (c) Expand existing Continuing Care facilities in excess of 10 percent of the current number of available Independent Living Units (ILU's) or available health related units/beds.
- 8200.8 To obtain a Permanent License, the applicant or provider must hold a valid Preliminary Certificate and shall submit the following to the Commissioner for review at least 60 days before the facility opening:
- (a) An updated Application for Licensure;
  - (b) An updated Disclosure Statement;
  - (c) Confirmation of signed reservation agreements for new units required by the Continuing Care facility to break-even, and that those units were reserved by a deposit equal to at least 10 percent of the entrance fee or by a non-refundable deposit equal to the periodic fee for at least two months for facilities that have no entrance fee;

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- (d) All reports as required by an approved accrediting organization for the continuing care retirement community to maintain its accreditation; and
  - (e) A summary of the report of an actuary estimating the capacity of the applicant to meet its contractual obligation to the residents.
- 8200.9 Upon issuance of a Permanent License and satisfaction of all other legal requirements, the applicant or provider may:
  - (a) Open the Continuing Care facility; and
  - (b) Provide Continuing care services.
- 8200.10 If all other licensing requirements are met, the Commissioner may, in lieu of denying the issuance of a Permanent License, issue a Restricted or Conditional License to an applicant when one or more of the following conditions exist:
  - (a) A hazardous financial condition; or
  - (b) Occupancy at the facility, or the number of executed agreements for new units at the facility, is below the level at which the facility would break-even.
- 8200.11 Upon issuance of the Restricted or Conditional License, the provider may operate the facility under the conditions or restrictions established by the Commissioner until such time as the Commissioner alters the conditions for continued operations or issues a Permanent License.
- 8200.12 Upon issuance of the Restricted or Conditional License, the provider shall file with the Commissioner each quarter a financial statements and an occupancy report, both due no later than 45 days following the end of each fiscal quarter.
- 8200.13 Any person seeking to operate a new Continuing Care Retirement Facility in the District of Columbia shall file an application for licensure following the process described in section 8200, with a filing fee in the amount of \$500.00 attached to the Application for Continuing Care Retirement Community Start-up Certificate.
- 8200.14 All continuing care retirement facilities operating as such in the District of Columbia on the effective date of these regulations, shall submit an application for Permanent License with a filing fee in the amount of \$500.00 attached within 120 days after the effective date of the final regulations. Such existing continuing care retirement facilities may apply

for a Permanent License without first obtaining a Start-Up Certificate or Preliminary Certificate. The permanent licensure application under this subsection shall be accompanied by the following:

- (1) Disclosure statement,
- (2) Financial statements,
- (3) Escrow agreement,
- (4) Narrative describing the facility, its mode of operation and its location,
- (5) Advertising materials that are used or to be used; and
- (6) Confirmation of signed agreements for units in the Continuing Care facility to break-even, reserved by a deposit equal to at least 10% of the entrance fee or by a non-refundable deposit equal to the periodic fee for at least two months for facilities that have no entrance fee.

8200.15 Each applicant pursuant to subsection 8200.14 may continue to operate until the Commissioner acts upon the application for permanent licensure. In event the application is denied pursuant to section 102 (d) or (e) of the Act, the applicant shall thereafter be treated as a continuing care retirement facility whose certificate of authority has been revoked.

## **8201 REVOCATION OF LICENSE**

8201.1 The revocation process provided within this section shall apply to a Start-Up Certificate, Preliminary Certificate, Permanent License, and Restricted or Conditional License.

8201.2 The suspension or revocation of a license or certificate of authority, the denial of an application, or the imposition of an administrative penalty shall be by written order and shall be sent to the continuing care retirement provider, facility, or applicant by certified or registered mail. The written order shall state the grounds, charges, or conduct on which suspension, revocation, denial, or imposition of administrative penalty is based. A continuing care retirement facility, provider, or applicant may in writing request a hearing within 30 days from the date of the mailing of the order. If no written request is made, such order shall be final upon expiration of the 30 days.

- 8201.3 If a continuing care retirement facility, provider, or applicant requests a hearing, the Commissioner shall issue a written notice of hearing and send it to the continuing care retirement facility, provider, or applicant by certified or registered mail. The notice shall include a specific date, time and place for the hearing.
- 8201.4 If a hearing is requested, the Commissioner or his designee shall be in attendance and shall conduct the proceedings. The provisions of the District of Columbia Administrative Procedure Act, approved October 21, 1968, (82 Stat. 1204; D.C. Official Code § 1-1501 *et seq.*) ("DCAPA") shall apply to the proceedings under this section.
- 8201.5 After a hearing, or upon failure of the continuing care retirement facility, provider, or applicant to appear at a hearing, the Commissioner shall issue a decision and order that includes findings of fact and conclusions of law. The Commissioner's decision and order shall be sent to the continuing care facility, provider, or applicant by certified mail. The Commissioner's decision and order shall be subject to appeal to the District of Columbia Court of Appeals.
- 8201.6 When the license or certificate authority of a continuing care retirement facility, provider, or applicant is revoked, such entity shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs within the District, and shall conduct no further business within the District except as may be essential to the orderly conclusion of the affairs of such organization within the District. It shall engage in no further advertising or solicitation whatsoever within the District. The Rehabilitation and Liquidation provisions under section 111 of the Act shall be implemented unless the Commissioner, by written order, permits further operation of the organization as the Commissioner may find to be in the best interest of residents of a continuing care retirement facility, to the end that residents will be afforded the greatest practical opportunity to obtain continuing care services.

**8202 SALE OR TRANSFER OF OWNERSHIP**

The sale or transfer of ownership process in section 104 of the Act shall apply to the holder of a Start-Up Certificate, Preliminary Certificate, Permanent License and Restricted or Conditional License.

**8203 STANDARDIZED DISCLOSURE STATEMENT FORMAT**

All Disclosure Statements shall be prepared following a standardized format issued by the Commissioner, which he may update as necessary.

**8204 HEALTH AND FINANCIAL CONDITIONS FOR ACCEPTANCE**

The health and financial conditions for acceptance as a resident shall appear within the Disclosure Statement. The Disclosure Statement shall also include any conditions related to the acceptance conditions required by the provider or facility, such as age, ability to move or communicate, minimum assistance levels necessary to perform daily activities, prepare wills, and ability to pay under specified conditions.

**8205 FINANCIAL STATEMENTS AND COMPILED FIVE -YEAR FORECASTS**

8205.1 Certified financial statements, as required by section 105 (a) (10) of the Act, and compiled five year forecasts, as required by section 105 (a) (12) of the Act, shall be prepared by an independent CPA and shall be of the provider's corporation or other legal entity that owns the Continuing Care facility. The Commissioner may also require the provider to supply supplementary financial data or other appropriate disclosure on individual Continuing Care facilities, where a corporation or other legal entity owns various Continuing Care facilities or is engaged in various enterprises.

8205.2 The Commissioner may accept all or part of the report and supporting documentation of an approved accrediting organization acceptable to the Commissioner to satisfy the review requirements under the Act; provided that such acceptance shall not preclude the Commissioner from performing the examination function.

**8206 COMPILED FIVE-YEAR FORECAST**

8206.1 The compiled five-year forecast shall consist of the following:

- (a) A balance sheet including, at a minimum, individual categories or line items that sum into the following sub-totals;
  - (1) Current assets;
  - (2) Restricted assets, including a line item for operating reserve assets;
  - (3) Fixed assets, including property, plant, and equipment;
  - (4) Total assets;
  - (5) Current liabilities;
  - (6) Long-term debt;

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- (7) Total liabilities;
- (8) Overdue revenue-refundable;
- (9) Deferred revenue-nonrefundable;
- (10) Equity or fund balance-unrestricted; and
- (11) Equity or fund balance-restricted;
- (b) A statement of operations including, at a minimum, the following categories or line items:
  - (1) Monthly fee revenues;
  - (2) Amortization of entrance fees;
  - (3) Health care revenues;
  - (4) Investment/interest income;
  - (5) Contributions/gifts;
  - (6) Health care expenses;
  - (7) Operation expenses, consisting of at least maintenance, laundry, and housekeeping;
  - (8) Dietary expenses;
  - (9) Administrative expenses;
  - (10) Interest expenses; and
  - (11) Depreciation;
- (c) A statement of cash flows; and
- (d) A narrative detailing all significant assumptions.

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**INFORMATION REQUIRED OF PROPOSED OR  
DEVELOPMENT STAGE FACILITIES APPLICABLE TO  
FACILITIES SEEKING TO EXPAND****10579**



The Commissioner may require all or part of the information listed under Section 105 (a) (14) of the Act be provided by existing Continuing Care facilities that apply to expand their facilities.

**8208                    INSOLVENCY OR HAZARDOUS FINANCIAL CONDITION**

8208.1                The Commissioner may deem a provider or facility that has a negative fund balance to be insolvent or in imminent danger of becoming insolvent if any of the following hazardous financial condition standards or factors are applicable or present:

- (1)        There are findings or conditions reported in the provider's or facility's financial statements that the Commissioner determines to be adverse to the financial stability of the provider or facility;
- (2)        The current or projected ratios of total assets, including required reserve levels, to total liabilities indicate an impairment or a deterioration of the provider's or facility's operations or equity; or demonstrate a trend that could lead to an impairment or a deterioration of the provider's or facility's operations, working capital, or equity;
- (3)        The current or projected ratios of current assets to current liabilities indicate an impairment or a deterioration of the provider's or facility's operations, working capital, or equity; or demonstrate a trend that could lead to an impairment or a deterioration of the provider's or facility's operations, working capital, or equity;
- (4)        The provider or facility is unable to perform normal daily activities and meet its obligations as they become due, considering the provider's or facility's current or projected cash flow and liquidity position;
- (5)        The provider's or facility's operating losses for the past year or projected operating losses are of such magnitude as to jeopardize normal daily activities or continued provider or facility operations;
- (6)        The insolvency of an affiliated provider or facility or other affiliated person results in legal liability of the provider or facility for payments and expenses of such magnitude as to jeopardize the provider's or facility's ability to meet its obligations as they become due, without the substantial disposition of assets outside the ordinary course of business, restructuring of debt, or externally forced revisions of its operations;
- (7)        The provider or facility has receivables that are more than 90 days old;

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- (8) The insolvency is not temporary and the provider or facility cannot demonstrate that the insolvency will be materially reduced or eliminated;
- (9) There is an adverse effect on the provider or facility of reporting entrance fees as deferred revenues, with consideration given to all reporting requirements required under generally accepted accounting principles, and the ultimate net income component of those revenues; and
- (10) A start-up provider or facility or any operational provider or facility undergoing plant expansion or refinancing of its debt has a financial condition as a result of such action that could otherwise seriously jeopardize its present or future operations.

8208.02 The provider or facility shall prepare a plan to address and correct any condition that has led to a determination of insolvency or imminent danger of insolvency by the Commissioner. The plan must be presented to the Commissioner within 90 days after the date of the insolvency determination. If the plan to correct the condition is disapproved by the Commissioner, the plan does not correct the condition leading to the Commissioner's determination of insolvency, or the provider's or facility's hazardous condition is such that it cannot be significantly corrected or eliminated, the Commissioner may take action pursuant to Sections 103 and Section 111 of the Act.

## 8209 BOOKS AND RECORDS

8209.1 Each provider shall maintain its books and records in the District of Columbia and shall not remove from the District of Columbia its books and records without the permission of the Commissioner.

8209.2 Each provider shall maintain its books and records for 3 years.

## 8299 DEFINITIONS

8299.1 "Act" means the Continuing Care Retirement Communities Act of 2004 (Act), effective April 6, 2005, (D.C. Law 15-270; D.C. Official Code § 44-151.01 *et seq.*) (2005 Supp.)

"Break-even" means confirmation of sufficient executed resident's agreements to assure the facility's financial stability and which further indicate that projected revenues will at least be equal to projected expenses.

“Commissioner” means the Commissioner of the District of Columbia’s Department of Insurance, Securities, and Banking,

“Disclosure Statement” means a document containing all the information required by section 105 of the Act.

“Continuing care facility” means a building, or complex of buildings under one management at one or more sites, if continuing care services are provided.

“Continuing care services” means the continuum of care, ranging from independent living to assisted living to nursing home care, provided pursuant to a contract for the life of the individual purchasing the services or for a period of not less than one year.

“Development stage facilities” means the beginning of the legal commitment to develop a continuing care retirement community up to the point when residents are admitted to reside in the facilities.

“Entrance fee” means a payment that assures a resident a place in a facility for a term of at least a year or life.

“Health related services” means domiciliary (rest home) care or Homes for the Aged, skilled or intermediate nursing, nursing home or rest home admission, or priority admission into a facility, unit, or bed providing any of the above-named services.

“Health units/beds” means beds in the Health Center (also known as the Nursing Home) component of the CCRC, which are occupied by a resident having been referred to that level of care by a hospital (as on discharge) or by a physician.

“Independent living units” means a room, apartment, cottage, or other area within a continuing care facility set aside for the exclusive use or control of one or more identified residents who do not need specialized health care services beyond general preventative health care.

“Negative fund balance” is a financial position of a provider or facility in which the assets of a provider or facility do not exceed its liabilities, as required under generally accepted accounting principles.

“Provider” means the promoter, developer, or owner, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care services.

Persons desiring to comment on these proposed rules should submit comments in writing to Leslie E. Johnson, Hearing Officer, Department of Insurance, Securities, and Banking, 810 First Street, N.E. Suite 701, Washington, D.C. 20002, not later than 30 days after publication of this notice in the D.C. Register.

**DISTRICT OF COLUMBIA TAXICAB COMMISSION  
PANEL ON RATES AND RULES**

**NOTICE OF PROPOSED RULEMAKING**

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under sections 8(b)(1)(J) and 9(b) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, (D.C. Law 6-97; D.C. Official Code §§ 50-307(b) (1)(J), and 50-308(b) (2001)), hereby gives notice of its proposed rulemaking action taken November 9, 2005, to amend § 102 of Chapter 1 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The proposed rulemaking will change the number of Commissioners required to hold a closed executive session from six (6) to a majority of Commissioners in office. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following section in 31 DCMR Chapter 1 is amended as follows:

**102            MEETINGS**

- 102.8            By affirmative vote of a majority of Commissioners in office, the Commission may schedule or hold a closed executive session to discuss personnel, litigation, or other matters of a private or confidential nature. No official action may be taken in an executive session, and no records shall be kept of the session other than a record of the vote to schedule or hold the session.

Any person desiring to file written comments on the Panel's proposed rulemaking action must do so not later than thirty (30) days after the publication of this notice in the District of Columbia Register. Comments should be filed with Kimberly A. Lewis, Attorney Advisor and Secretary, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. Copies of the proposed rulemaking may be obtained by writing to the above address.

**DISTRICT OF COLUMBIA TAXICAB COMMISSION  
PANEL ON RATES AND RULES**

**NOTICE OF PROPOSED RULEMAKING**

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under sections 8(b)(1)(J) and 9(b) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, (D.C. Law 6-97; D.C. Official Code §§ 50-307(b) (1)(J), and 50-308(b) (2001)), hereby gives notice of its proposed rulemaking action taken November 9, 2005, to amend § 104 of Chapter 1 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The proposed rulemaking will change the number of Commissioners required to be present to hold meetings concerning matters that do not require a vote from six (6) to a majority of Commissioners in office. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following section in 31 DCMR Chapter 1 is amended as follows:

**104            QUORUM**

- 104.1            A majority of the Commissioners in office shall constitute a quorum for the transaction of business at all meetings of the Commission, except that a meeting may commence for the consideration of matters not requiring a vote when a majority of Commissioners in office are present.

Any person desiring to file written comments on the Panel's proposed rulemaking action must do so not later than thirty (30) days after the publication of this notice in the District of Columbia Register. Comments should be filed with Kimberly A. Lewis, Attorney Advisor and Secretary, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. Copies of the proposed rulemaking may be obtained by writing to the above address.